

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4535 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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A B SHAIKH

Versus

STATE OF GUJARAT & ANR.

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Appearance:

None present for the Petitioner

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/96

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly in the third round but none put appearance on behalf of the petitioner.

2. In court, three advocates are present who are A.G.Ps.. They are Shri V.B. Gharania, Shri Samir Dave and Shri Mukesh Patel. The court has called upon them who will be the person who will address the court in the

matter. All the three advocates said that the papers of this case have not been given to them nor they have any instructions in the matter. It is really a sorry state of affairs as prevailing in the State from the side of the Government in its litigations. The Government advocate is not provided with the papers of the case nor has been given any instructions. That shows how the State Government is taking the litigations which are pending in this court. The Government has taken the litigations very casually. For the last two years, I am seeing here in this State as if the Government has no concern with the litigations. It is a matter of notice that the Government is the biggest litigant in the country and it is expected of the Government that it will provide sufficient, effective and prompt assistance to the court to enable the court to dispose of the matters expeditiously. My experience goes that because of slackness as well as inaction or omission and carelessness on the part of the officers of the Government the matters are not being disposed of expeditiously. The matters remain incomplete for want of replies. It is a matter of fact, notice of which can be taken that in substantial percentage of cases, the Government has not filed the reply. However, it is a matter of concern of the Government and not for this court, but one thing is clear that this court will not defer the matter only because the Government is not taking care to make available the papers of the cases to the Government advocates. Nobody is present on behalf of the Government in the court to give the instructions and sufficient assistance with the help of the record to its counsel.

3. Perused the Special Civil Application. The petitioner, a Police Sub-Inspector of the Police department of the State of Gujarat, filed this petition before this court and prayer has been made that his supersession in the matter to the post of Police Inspector be declared to be illegal, unconstitutional, and without jurisdiction, and necessary direction be given to the respondent to promote him to the post of P.I. with effect from September 10, 1982 whereon his immediate junior was promoted to the post of P.I. The criteria for promotion to the post of P.I. from P.S.I. is proved merit and efficiency.

4. The reply to this Special Civil Application is filed by the respondent which is on the record where from it has come out that the petitioner was communicated with the adverse remarks for the year 1974-75 to 1978-79. The case of the petitioner was considered for promotion in

the month of February, 1982 and he was superseded. The petitioner claims the promotion only on the basis of the fact that he was allowed to cross the efficiency bar, but the criteria for promotion and criteria for crossing of the efficiency bar, are quite different. In the matter of allowing an officer to cross the efficiency bar, there is no criteria of proved merit and efficiency which is there in the case of promotion. In the presence of adverse remarks continuously from 1974-75 to 1978-79, I do not consider any illegality in the action of the respondent to supersede the petitioner in the matter of promotion. The petitioner has a fundamental right of consideration for promotion and not the right of promotion.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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zgs/-